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SPRUNGER'S MINERALS
P.O. BOX 38054
LEAMINGTON, UT 84638
(801) 857-2572

Orig file cc Tom Wayne MD

5/023/018

July 20, 1998

Ms. Mary Ann Wright
Department of Natural Resources
Division of Oil, Gas and Mining
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Dear Mary Ann:

We went with Tom Munson last Wednesday, July 15, to look at our claims. Since it looks like our total disturbance is about one acre and they can be inspected in about 1/2 day, we request that they be put on one permit. Some of these diggings have been worked with hand tools only for several years. If necessary, we could close out some of these permits and fill in the pits this fall. (This may make some rockhounds unhappy though!)

Thank you for your help.

Sincerely,

Sandra Sprunger

Sandra Sprunger

MY RECOMMENDATION IS AS FOLLOWS:
CLOSE EAGLE'S ROOST
TRANSFER BERYL
COMBINE CUBICAL #7, #2 + SERENDIPITY

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July 21, 1998

John Holfert
997 N. Chapel Rd., #4
Bountiful, UT 84010

Dear John:

We recently learned that you are trying to jump our Cubical 7 Claim. This past spring you knowingly entered our claim whose boundaries were clearly marked on the ground, you made a road in with a trackhoe to our discovery pits, and then you illegally extracted minerals. Tom Munson, Utah DOGM, said you told him that you had dug and sold many of the pink topaz-bixbyite combinations from this claim and that you had made a lot of money from their sale. Our mining attorney, Robert Pruitt, Jr., says that according to Utah state law, you are liable for three times the value of the minerals you took.

Tom Munson said that you used GPS and found that our measurements are off and that the location of our claim is inaccurately described on the Location Notice. This area was unsurveyed and GPS was not available when we staked the claim in 1989, so it is possible that the description is inaccurate. However, we did attempt in good faith to describe the location, and we did mark it clearly on the ground around the existing discovery pits. We've always heard, "It's what's on the ground that counts." This makes sense and is supported by numerous court cases. (See enclosed copies from a book on mining law.) Otherwise it would be too easy for claim jumpers to takeover existing claims simply by moving posts around or detecting errors in description.

Even if you have moved our corner markers and monument, the discovery pits define where we intended our claim. You may think that because you have obliterated the original pits with your trackhoe work, we could not prove where our claim is. These pits were well documented by the BLM. In August, 1993, the BLM wanted us (Cubical #7) or previous claimant Joe Marty (Petrea #2) to reclaim or accept responsibility for the pits. When we explained that these discovery pits were pre-FLPMA and therefore grandfathered, the BLM accepted this.

The BLM and the state could hold us responsible for reclaiming your trackhoe work because we did file a Notice of Intent on this claim in May, 1993. (The discovery holes were also documented in our Notice at that time.) Why didn't you approach us openly and ask to work our claim? We might have worked something out. Our Notice for blasting or an amended Notice could have covered your work. As it is, the Fillmore BLM says that this is the second time you have failed to file a Notice of Intent and that you were already in noncompliance.

We don't know if the BLM would accept your work under our Notice or an

amended Notice. If they did, your work would not be an infraction and future reclamation would fall on us. To avoid legal expences, we would accept this since we would have done this work ourselves, anyway, at a future date, but you would have to concede the integrity of our claim (quitclaim). If you do not agree with this, we will have to settle in court, and we will hold you responsible for damages. If you do not reply by 8/15/98 or if you expand the disturbance, we will assume that you do not want to negotiate.

Sincerely,

Mike Sprunger

Sandra Sprunger

Mike Sprunger
Sandra Sprunger

P.S. A man from Mapleton told us that he saw you working our Beryl Claim with a trackhoe this past spring. We are in the process of selling this claim so you are responsible to the new owners.

Errors in Description of Claim in Location Notice

In *Rasmussen Drilling v. Kerr-McGee Nuclear Corp.*, 571 F2d 1144 (10th Cir 1978), the Court considered a case where a junior locator filed over claims described in the wrong township. Kerr-McGee, the senior locator, conducted uranium exploration in the South Powder River Basin, Wyoming for several years prior to 1967. It contracted surface owners and completed staking by December 1967, and filed with the county recorder by December 1967. A clerical error made in the descriptions of the claims on the location notice placed the claims in section 19 rather than 17. Rasmussen Drilling, the junior locator, located claims over the Kerr-McGee claims after Kerr-McGee completed validation drilling, staking and radiometric surveys. Then, after Rasmussen Drilling located new claims, Kerr-McGee filed amendments correcting the descriptions and placing the claims in section 17. The tenth Circuit Court of Appeals decided the case in favor of Kerr-McGee because the junior locator had actual notice from the activity on the ground and did not need to see a recorded notice. The Court, in making an issue of bad faith on the part of the junior locator, stated:

> The parties agree that the decisions are replete holding that failure to record a location certificate within the period prescribed by statute, i.e., 60 days from the date of discovery as set forth in Wyo. Stat. 1957 sec. 30-1, does not render the certificate invalid or void.
>
> We hold, however, that there is substantial evidence in the record to support the jury verdict on the basis of Rasmussen's actual notice of the Kerr-McGee claims in place on the ground, together with constructive notice of the original filings of the Yike certificates, even though they were recorded in Section 19 rather than Section 17.
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> In *Globe Mining Co. v. Anderson*, 78 Wyo. 17, 318, P2d 373 (1957), the court specifically held that the function of recording the location notice in the office of the county clerk is that of giving constructive notice and that one who has actual notice will not be heard to complain, even if no recordings have been made in the county records. The *Globe* decision definitively spelled out the *Scoggin v. Miller*, 64 Wyo. 206, 189 P2d 677 (1948),... rule that one who has actual notice may not rely upon or take advantage of defects in recordation.
>
> The purpose to be thus served (of recording a notice) would seem to be predicated upon the possibility that the boundary markers, just as the posted notice, may very likely be lost or destroyed on the ground. Under such circumstances, constructive notice is provided by the location certificate to be recorded in accordance with Wyo. Stat. 1957 sections 30-1(4), (5) and (6);
>
> The court observed that where a mining locator attempts, in good faith, to comply with the law, courts are inclined to be liberal in construing his acts so as not to defeat his claim by technical criticism.
>
> ...the general rule that a miner who proceeds in good faith to comply with the various requirements applicable to perfection of a valid location is to be treated with indulgence, and the notices required are to receive a liberal construction.

Id at 1157 and 1158.

In *Lombard Turquoise Milling & Mining v. Hermanes*, 430 F. Supp. 429 (1977), the Court in considering a similar case to the one above, stated:

> Where plaintiff knew at the time it purchased its claims that its location map, recorded in 1972 did not correctly define boundaries of its claims as located on the ground and that its claims, as located on the ground, did not encroach on unpatented mining claim of defendants, who possessed land since 1972, plaintiff exercised bad faith in February, 1973, when it located additional mining claims which conflicted with defendants' and thus fact that defendants' claim was originally recorded in wrong section and township, until December, 1974, when amended certificates of location and amended map were filed, did not render defendants' claim absolutely void.

Senior Locator Has Advantage in Court

The Nevada Supreme Court ruled in favor of the senio locator in a case where the claim was poorly monumented an the claim map was inaccurate and did not agree with th description in the location notice. *Kenney v. Greer*, 656 P2d 85 (Nev. 1983). This is just another typical example of how th courts will uphold the location of a senior locator acting in goo faith despite the fact that compliance with state and Federa location requirements is minimal. Those junior locations "claim jumpers" who wish to have the courts adjudicate th right of possession to a mining claim should be aware that th junior locator seldom prevails even though the claim is n monumented and the description of the claim in the locatio notice is erroneous.

7/21/98

Tom-

I'm also enclosing a copy of our letter to Holfert for your information.

-Mike